

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SANTANDER CONSUMER USA, INC.,

Plaintiff,

and

KATE A. MENSAH,

Plaintiff-Intervenor,

v.

THE CITY OF YONKERS, A.P.O.W. TOWING,
LLC, AND HAROLD WUESTENHOEFER,

Defendants.

Case No. 20-CV-4553 (KMK)

ORDER

By Opinion and Order dated September 12, 2022, the Court denied Defendant City of Yonkers’s Motion for Summary Judgement, granted in part and denied in part Defendants APOW and Wuesenhofer’s Motion for Summary Judgment, and granted Plaintiff-Intervenor’s Motion for Summary Judgment. (Dkt. No. 144 (“MSJ Op.”)). Additionally, the Court granted Plaintiff-Intervenor permission to move for summary judgment for monetary damages by separate motion, and to move for attorneys’ fees, as a prevailing party, pursuant to Federal Rule of Civil Procedure 54(d)(2). (*Id.*)

Plaintiff-Intervenor filed a Motion for Summary Judgment on damages and attorneys’ fees on November 9, 2022. (Dkt. Nos. 160–162.) Defendants APOW and Wuesenhofer filed their Opposition on May 24, 2023. (Dkt. No. 184.) Defendant City of Yonkers filed its Opposition on May 26, 2023. (Dkt. Nos. 186–87.) Plaintiff-Intervenor filed her Reply on June 23, 2023. (Dkt. No. 188).

Following oral argument on October 4, 2023, the Court reserved decision pending letter briefing regarding a number of issues. On October 10, 2023, Intervenor filed her letter brief. (Dkt. No. 202.) Defendants filed their own respective letter briefs on October 13, 2023. (Dkt. No. 203–04.) After considering the outstanding issues, the Court denied Plaintiff-Intervenor’s damages motion in light of her failure to provide supporting documentation concerning the condition of the converted vehicle without prejudice to her ability to submit such documentation. (Dkt. No. 208.)

Plaintiff-Intervenor filed supplemental documentation on April 15, 2024. (Dkt. No. 209.) Defendants responded to that submission on June 7, 2024, (Dkt. Nos. 210–11), and Plaintiff-Intervenor filed a Reply on June 11, 2024, (Dkt. No. 212).

As explained, *inter alia*, on the record on July 15, 2024, (Dkt. No. 215), the Court concludes and orders as follows:

With respect to Count I of the Intervenor Complaint, the Court determined that the Defendants violated the Plaintiff-Intervenor’s Fourth and Fourteenth Amendment rights under the United States Constitution. (MSJ Op. at 20.)

Count II of the Intervenor Complaint was dismissed by previous order of this Court. (MSJ Op. at 21).

With respect to Count III of the Intervenor Complaint, the Court determined that the Defendants violated the Plaintiff-Intervenor’s rights under the Fourth and Fourteenth Amendments to the United States Constitution, but dismissed this claim insofar as it arose under the New York State Constitution. (MSJ Op. at 20–21.)

With respect to Court IV of the Intervenor Complaint, having determined that the APOW Defendants converted the Plaintiff-Intervenor’s vehicle, the Court awards Plaintiff-Intervenor

Kate Mensah compensatory damages against the defendants, APOW Towing LLC and Harold Wuestenhoefer, jointly and severally, in the amount of \$19,000.00 plus interest at the legal rate of nine (9%) percent per annum accruing from January 24, 2020 through July 15, 2024, such interest totaling \$946.35, for a total of \$19,946.35.

Count V of the Intervenor Complaint was dismissed by previous order of this Court (MSJ Op. at 24.)

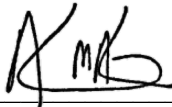
Having previously determined that the Plaintiff-Intervenor is a prevailing party and that her requests for attorneys' fees and costs are reasonable, the Court awards the Plaintiff-Intervenor \$88,849.00 in attorneys' fees, plus \$433.16 in costs, for a combined amount of \$89,282.16.

The Court, therefore, directs the Clerk of the Court to enter judgment:

- (a) in the amount of \$19,946.35 jointly and severally against Defendants, APOW Towing LLC and Harold Wuestenhoefer; and
- (b) in the amount of \$89,282.16 jointly and severally against all Defendants.

SO ORDERED

Dated: September 3, 2024
White Plains, New York



KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE